UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2002/NGO/74
31 January 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 11 (b) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: DISAPPEARANCES AND SUMMARY EXECUTIONS

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

---

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *200201050 0*

ENG

Disappearances in Sri Lanka

1. The December 1999 recommendations of the Working Group on Enforced or Involuntary Disappearances to the Government of Sri Lanka (E/CN.4/2000/64/Add.1) have—all but for one—not been implemented. Although an Inter-ministerial Committee of Secretaries was appointed to look into implementation, it did not do anything substantial other than monitor payment of compensation to victims' families and pass on a list of alleged perpetrators of disappearances to the Department of the Attorney General. The recommendations and respective outcomes were as follows:

   RECOMMENDATION: "The Government should establish an independent body with the task of investigating all cases of disappearance which occurred since 1995 and identifying the perpetrators."

   OUTCOME: Due to the ongoing lack of such an independent body, there has been no investigation into tens of thousands of cases, nor has evidence been collected to prosecute cases. The usual excuse for not prosecuting is lack of evidence, yet there are people willing to give evidence unable to do so due to the absence of an independent authority to record it.

   RECOMMENDATION: "The Government should speed up its efforts to bring the perpetrators of enforced disappearances, whether committed under the former or the present Government, to justice. The Attorney-General or another independent authority should be empowered to investigate and indict suspected perpetrators of enforced disappearances irrespective of the out-come of investigations by the police."

   OUTCOME: Tens of thousands of people await such justice and nothing is being done.

   RECOMMENDATION: "The act of enforced disappearance should be made an independent offence under the criminal law of Sri Lanka punishable by appropriate penalties as stipulated in article 4 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance."

   OUTCOME: No steps have been taken to create such on offence. Not even a draft law has been made.

   RECOMMENDATION: "The Prevention of Terrorism Act and the Emergency egulations currently in force should be abolished or otherwise brought into line with internationally accepted standards of personal liberty, due process of law and humane treatment of prisoners".

   OUTCOME: The Prevention of Terrorism Act remains in force. The Emergency Regulations were suspended in September 2001.

   RECOMMENDATION: "Any person deprived of liberty should be held only in an officially recognized place of detention as stipulated in article 10 (1) of the Declaration. All unofficial places of detention, in particular those established by paramilitary organizations fighting alongside the Security Forces, such as PLOTE and TELO, should immediately be dissolved."

   OUTCOME: No action has been taken to dissolve non-official places of detention.

RECOMMENDATION: "The Government should set up a central register of detainees as provided for in article 10 (3) of the Declaration. Since the Human Rights Commission needs to be informed immediately of every arrest and detention under the Prevention of Terrorism Act and the Emergency Regulations, such a central computerized register of detainees might be established at its headquarters. Such a solution would, however, require a substantial increase in the powers and resources of the Commission."

OUTCOME: No register has been established. Even the National Human Rights Commission has not made any attempt to this end. While computerization would not be so difficult, due to communication advances in the country, the making of such a register is prevented as its existence would obstruct the style of law enforcement practices in Sri Lanka that violate international norms and standards. The National Human Rights Commission also lacks the resources to even carry out its most mundane tasks.

RECOMMENDATION: "All families of disappeared persons should receive the same amount of compensation. The differentiation between public civil servants and others seems discriminatory and should, therefore, be abolished. Compensation should not be made dependent on the confirmation as 'proven' by a Commission of Inquiry. In addition to these compensations, the families of disappeared persons should be supported, according to their needs, by other means, such as low interest loan schemes or scholarships for the children."

OUTCOME: Payment of compensation has been haphazard. People in some areas have received payments while others have not.

RECOMMENDATION: "The procedure for issuing death certificates in cases of disappearances should be applied in an equal and non-discriminatory manner to all families."

OUTCOME: The procedure for obtaining death certificates still does not help the displaced, as they have no access to divisional secretaries of their respective areas who should process applications for death certificates. Since the issue of certificates has to be carried out in the areas where the disappearances took place, a further obstacle is placed before internally displaced persons as many of the disappearances occurred during their displacement and they do not know at exactly what point it transpired.

RECOMMENDATION: "The prohibition of enforced disappearance should be included as a fundamental right in the Constitution of Sri Lanka to which the remedy of a direct human rights complaint to the Supreme Court under article 13 of the Constitution is applied irrespective of the fact whether the disappeared person is presumed to be alive or dead."

OUTCOME: A constitutional amendment has neither been made nor envisaged. The appropriate amendment would recognise the right to life as a fundamental right. Under article 126 of the Constitution dependents of victims would then be enabled to file rights cases. When the seventeenth amendment to the Constitution was discussed this matter could easily have been raised, but it was instead neglected. Meanwhile, a Supreme Court decision on fundamental rights has made it impossible for persons complaining of disappearances to find relief under the Constitution.

RECOMMENDATION: "The Government should instruct the special unit in REPPIA to respond to the cases submitted by the Working Group on a case-by-case basis, in order to enable the Working Group to solve the cases which were reportedly clarified."

OUTCOME: The Asian Legal Resource Centre is not aware as to whether this recommendation has been adhered to or not.

2. The major obstacle to the implementation of these recommendations is the unsatisfactory performance of the national prosecutor's office, which in Sri Lanka is the Department of the Attorney General. Recommendations to establish an independent prosecutor's office made by government-appointed commissions since 1946 have also been ignored. An independent and effective prosecutor's office is an integral requirement for correcting a serious legal breakdown. The mass disappearances in Sri Lanka are the manifestation of a justice system in serious crisis, thus posing a threat to the rights of people in all areas of life. Hence, in the view of the Asian Legal Resource Centre appointing an effective prosecutor to bring the perpetrators of mass disappearances to justice are essential to fulfill Sri Lanka's obligations as a state party to the International Covenant on Civil and Political Rights (ICCPR).

3. Under international pressure, the Attorney General had filed about 500 disappearance cases, however the number is insignificant in light of the mass disappearances recorded by four commissions and numerous other reports. Prosecutors and investigators have neglected many of these cases. One successfully prosecuted case was that of 24 schoolchildren disappeared by a school principal and some army officers, for which he culprits received around ten years imprisonment. Though an achievement, the case still raises many questions. The disappearance of 24 young children is a crime against humanity, however there is no such criminal offence in Sri Lanka. Even the causing of disappearances is not in itself a criminal offence. The most serious charge that can be filed against persons responsible for disappearances is abduction with intent to murder—but if bodies cannot be found, murder charges cannot be filed.

4. The above crime against schoolchildren was hushed-up for many years, despite complaints to the highest ranking army officers and head of the state. These high-ranking officers are therefore liable both criminally and under military disciplinary codes. But in general such cases if filed are only against junior officers. One reason for this is that the Disappearances Investigation Unit within the Police Department simply does not return files relating to senior officers to the prosecutors, claiming that its investigations are not complete. The Missing Persons Unit of the Attorney General's Department is then helpless to expedite action in those cases. Such delays are said to result from 'considerations of brotherhood'. Investigators are especially likely to protect senior officers at the expense of their juniors. The Missing Persons Unit has also chosen only cases where there is direct evidence of removal or disappearances, and has not looked into a large number of cases with strong circumstantial evidence. Victims removed involuntarily, detained and tortured and subsequently released or escaped have often been eyewitnesses to many atrocities in police stations and army detention centres but their information has not been utilized.

5. A remarkable feature of the 30,000-plus disappearances in Sri Lanka (excluding another 16,000 cases reported to the All Island Commission into disappearances that it did not have a mandate to investigate) is that they involved killings after arrest. Before being killed victims were normally interrogated in detention camps spread throughout the country. The state-appointed commissions of inquiry recorded these places of detention and the activities that took place in them but could not investigate further. In this regard the Final Report of the Presidential Commission of Disappearances, Sessional Paper No. 111 (1997) urged that a special investigation into 'torture chambers' run by the police and military be

undertaken. The officers assigned to camps known to have housed torture chambers can be established through official records. However up to date no action has been taken against these officers, and not even an investigating body has been appointed.

6. The locations of mass graves spread throughout the country have also not been investigated. In the early 1990s a few attempts to dig up graves occurred but did not involve professionals. Some work was also done at the Chemmani site, but a systematic investigation of mass graves in Sri Lanka is yet to occur.

7. The Attorney General has charged around 500 police and security force personnel against whom there is to date inadequate evidence to prosecute. The disciplinary code holds that any state officer facing a criminal case is interdicted from service until its conclusion, and is dismissed if convicted. Nonetheless, only some of those charged had been interdicted, and on 5 January 2001 the Inspector General of Police issued a general order granting re-instatement of any officers interdicted in relation to pending disappearance cases. The Asian Legal Resource Centre condemns this action as a violation of disciplinary procedure and an attempt to protect persons accused of causing disappearances. Disciplinary enquiries have also not been initiated against police involved in disappearances for violation of departmental rules. For instance, disappeared persons were found in police custody, but no entries made in the relevant books to indicate this, and nor has disciplinary action been taken against the officers involved. Officers are also promoted without regard to their involvement in disappearances or other gross human rights abuses.

8. The report of the All Island Commission into disappearances was handed to the president over a year ago but still has not been made public. The Asian Legal Resource Centre is aware that many people are still waiting to come forward and give evidence but are prevented due to lack of faith in judicial institutions that have failed to respond to mass disappearances with any degree of seriousness. The main responsibility for this failure lies with the Department of the Attorney General, which has failed to implement the recommendations of the UN Working Group cited above. We urge the UN Working Group and the Commission to seek a progress report on these recommendations from the Sri Lankan government.